

SUBPART 216.4—INCENTIVE CONTRACTS

(Revised August 19, 2011)

216.401 General.

(c) See PGI [216.401](#)(c) for information on the Defense Acquisition University Award and Incentive Fees Community of Practice.

(e) Award-fee plans required in FAR 16.401(e) shall be incorporated into all award-fee type contracts. Follow the procedures at PGI [216.401](#)(e) when planning to award an award-fee contract.

216.401-70 Data collection.

Section 814 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364) requires DoD to collect relevant data on award and incentive fees paid to contractors and have mechanisms in place to evaluate such data on a regular basis. In order to comply with this statutory requirement, follow the procedures at PGI [216.401-70](#).

216.401-71 Objective criteria.

(1) Contracting officers shall use objective criteria to the maximum extent possible to measure contract performance. Objective criteria are associated with cost-plus-incentive-fee and fixed-price-incentive contracts.

(2) When objective criteria exist but the contracting officer determines that it is in the best interest of the Government also to incentivize subjective elements of performance, the most appropriate contract type is a multiple-incentive contract containing both objective incentives and subjective award-fee criteria (i.e., cost-plus-incentive-fee/award-fee or fixed-price-incentive/award-fee).

(3) See PGI [216.401](#)(e) for guidance on the use of award-fee contracts.

216.402 Application of predetermined, formula-type incentives.

216.402-2 Technical performance incentives.

See PGI [216.402-2](#) for guidance on establishing performance incentives.

216.403 Fixed-price incentive contracts.

216.403-2 Fixed-price incentive (successive targets) contracts.

See PGI [216.403-2](#) for guidance on the use of fixed-price incentive (successive targets) contracts.

216.405 Cost-reimbursement incentive contracts.

216.405-1 Cost-plus-incentive-fee contracts.

See PGI [216.405-1](#) for guidance on the use of cost-plus-incentive-fee contracts.

216.405-2 Cost-plus-award-fee contracts.

(1) *Award-fee pool.* The award-fee pool is the total available award fee for each evaluation period for the life of the contract. The contracting officer shall perform an analysis of appropriate fee distribution to ensure at least 40 per cent of the award fee is available for the final evaluation so that the award fee is appropriately distributed over all evaluation periods to incentivize the contractor throughout performance of the contract. The percentage of award fee available for the final evaluation may be set below 40 per cent if the contracting officer determines that a lower percentage is appropriate, and this determination is approved by the head of the contracting activity (HCA). The HCA may not delegate this approval authority.

(2) *Award-fee evaluation and payments.* Award-fee payments other than payments resulting from the evaluation at the end of an award-fee period are prohibited. (This prohibition does not apply to base-fee payments.) The fee-determining official's rating for award-fee evaluations will be provided to the contractor within 45 calendar days of the end of the period being evaluated. The final award-fee payment will be consistent with the fee-determining official's final evaluation of the contractor's overall performance against the cost, schedule, and performance outcomes specified in the award-fee plan.

(3) *Limitations.*

(i) The cost-plus-award-fee contract shall not be used—

(A) To avoid—

(1) Establishing cost-plus-fixed-fee contracts when the criteria for cost-plus-fixed-fee contracts apply; or

(2) Developing objective targets so a cost-plus-incentive-fee contract can be used; or

(B) For either engineering development or operational system development acquisitions that have specifications suitable for simultaneous research and development and production, except a cost-plus-award-fee contract may be used for individual engineering development or operational system development acquisitions ancillary to the development of a major weapon system or equipment, where—

(1) It is more advantageous; and

(2) The purpose of the acquisition is clearly to determine or solve specific problems associated with the major weapon system or equipment.

(ii) Do not apply the weighted guidelines method to cost-plus-award-fee contracts for either the base (fixed) fee or the award fee.

(iii) The base fee shall not exceed three percent of the estimated cost of the contract exclusive of the fee.

(4) See PGI [216.405-2](#) for guidance on the use of cost-plus-award-fee contracts.

216.405-2-70 Award fee reduction or denial for jeopardizing the health or safety of Government personnel.

(a) *Definitions.*

“Covered incident” and “serious bodily injury,” as used in this section, are defined in the clause at [252.216-7004](#), Award Fee Reduction or Denial for Jeopardizing the Health or Safety of Government Personnel.

(b) In accordance with section 823 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111-84), the contracting officer shall include in the evaluation of any award fee plan, a review of contractor actions that jeopardized the health and safety of Government personnel.

(c) If, in performing under a contract, contractor or subcontractor actions cause serious bodily injury or death of civilian or military Government personnel, the contracting officer shall consider reducing or denying the award fee for any of the relevant award fee period in which the covered incident occurred, including the recovery of all or part of any award fees previously paid for such period.

216.405-2-71 Award fee reduction or denial for failure to comply with requirements relating to performance of private security functions.

(a) In accordance with section 862 of the National Defense Authorization Act for Fiscal Year 2008, as amended, the contracting officer shall include in any award-fee plan a requirement to review contractor compliance with, or violation of, applicable requirements of the contract with regard to the performance of private security functions in an area of contingency operations, complex contingency operations, or other military operations or exercises that are designated by the combatant commander (see [225.370](#)).

(b) In evaluating the contractor’s performance under a contract that includes the clause at [252.225-7039](#), Contractors Performing Private Security Functions, the contracting officer shall consider reducing or denying award fees for a period if the contractor fails to comply with the requirements of the clause during such period. The contracting officer’s evaluation also shall consider recovering all or part of award fees previously paid for such period.

216.406 Contract clauses.

(e)(1) Use the clause at [252.216-7004](#), Award Fee Reduction or Denial for Jeopardizing the Health or Safety of Government Personnel, in all solicitations and contracts containing award-fee provisions.

(2) Use the clause at [252.216-7005](#), Award Fee, in solicitations and contracts when an award-fee contract is contemplated.

216.470 Other applications of award fees.

See PGI [216.470](#) for guidance on other applications of award fees.